84-1194

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No. _____
(Court of Appeals, Fourth Circuit No. 5098)

IN THE SUPREME COURT OF THE UNITED STATES

_____ Term, 1985

JOHN O'HARE, EDDIE BRANTLEY, THOMAS EARNEST FOLSKE, THOMAS SAMS HIGHTOWER, TIMOTHY ALLEN LAXTON, HARRELL LEWIS, JR., and JOHN ISIDORE STEVENS,

Petitioners,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

(1)

Whether or not an unnecessary two (2) hour detention by U. S. Customs Agents of a vessel on navigable waters of the United States and unnecessarily requiring the vessel to travel under escort of U. S. Customs officials approximately nine (9) miles to a landing in order to effectuate an investigatory stop of the vessel when the investigatory stop of the vessel could have been made in one-eighth the time and distance, violates the Fourth Amendment to the United States Constitution.

(2)

Whether or not an unnecessary two (2) hour detention of a vessel by U.S. Customs Agents on navigable waters of the United States and unnecessarily requiring the vessel to travel approximately nine (9) miles for a period of two (2) hours to a landing in order to effectuate an investigatory stop of the vessel when the investigatory stop of the vessel could have been made in one-eighth the time and distance, is permissable under 19 U.S.C. 1581(a) or the reasonable suspicion

doctrine, and whether such conduct violates the protection afforded by the Fourth Amendment to the United States Constitution.

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TABLE OF AUTHORITIES

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United States v. Demanett, 629 F.2d 862, 865 (3rd Cir. 1980)

United States v. Zurosky, 614 F.2d 779 (1st Cir.) cert. denied, 46 U.S. 967 (1980)

Sharpe v. United States, 660 F.2d 967 (4th Cir. 1981), vacated and remanded 457 U.S. 1127 (1982) modified, 412 F.2d 65 (4th Cir. 1983) cert. granted, 53 U.S.L.W. 3040 (1984).

Statutes

19 U.S.C. 1581(a)

OPINION BELOW

The opinion of the Court of Appeals which affirmed the District Court's findingthe petitioners guilty on three (3) of four (4) counts of the indictment and reversing on one (1) count of the Indictment is to be published. The Order of the Court of Appeals for the Fourth Circuit denying the Petition for rehearing and suggestion for rehear ing en banc is unreported and appears in Appendix B hereto.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on September 11, 1984. A timely Petition for rehearing and suggestion for rehearing en banc was denied on November 16, 1984, and this petition for certiorari was filed within sixty (60) days of that date. This Court's jurisdiction is invoked under 27 USC Sect. 1254 (1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATUTORY PROVISIONS INVOLVED

U.S.C. 19 Section 1581(a) provides:

Boarding vessels.
Customs officers

(a) Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs enforcement area established under the Anti-Smuggling Act, or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehicle and every part thereof, and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle and use all necessary force to compel compliance.

STATEMENT OF THE CASE

Petitioners were found guilty in the United States District Court for South Carolina at a stipulated facts trial on a multiple count Indictment alleging (1) conspiracy to import marijuana in violation of 21 U.S.C. Sect. 963 (Count One), (2) conspiracy

to possess marijuana with intent to distribute in violation of 21 U.S.C. Sect. 846 (Count Two), and (3) importation of marijuana in violation of 18 U.S.C. Sect. 2, 21 U.S.C. Sections 952(a) and 960 (Count Three).

The Petitioners filed Notice of Appeal to the United States Court of Appeals for the Fourth Circuit on September 11, 1984. The Appeals Court filed its decision, affirming the District Court's finding on the first two (2) counts of the Indictment and reversing the District Court on Count Three of the Indictment.

Both the District Court and the Appellate Court found, in substance, the following factual situation.

On November 26, 1980, some time after 9:30 P.M., Colleton County Deputy Sheriffs arrested the operators of several tractor-trailer units containing large quantities of marijuana in an area known as Bennetts Point Landing, Colleton County, South Carolina. At approximately 3:30 A.M. United States Customs Officers were apprised of the situation and subsequently

Customs Patrol Officers left their location some twelve (12) or thirteen (13) miles from Bennetts Point in a Customs vessel, and upon reaching what is known as the Ashepoo River at approximately 4:00 A.M. they observed lights from what appeared to be two (2) vessels in an area of navigable waters farther out known as St. Helena Sound. The Customs Patrol circled the vessels and directed them to follow them back into the Ashepoo River to be boarded. where the water was calmer. Upon reaching the Ashepoo River the customs Patrol directed the vessels be taken to the dock at Bennetts Point Landing where they arrived at approximately 6:30 A.M., whereupon the Petitioners' vessel, the "Lady Lisa", was boarded and searched, where a small amount of marijuana residue was found, and Petitioners, who were aboard, were charged as aforesaid. The Petitioners argued in the District Court that the search and seizure of the vessel and Petitioners were unreasonable, and in violation of the Fourth Amendment of the

United States Constitution. They argued, in essence, that the two (2) hour detention of their vessel on navigable waters of the of the United States and requiring of the vessel to travel, under escort, approximately nine (9) miles to a dock in order to conduct an investigatory stop, when this investigatory stop could have been made much earlier in the Ashepoo River, was unreasonable and in violation of the Fourth Amendment of the Constitution of the United States of America. Both the District Court and the Appeals Court concluded that Customs Officials were entitled to escort the vessels to Bennetts Point Landing in order to effectuate an investigatory stop. The Appeals Court cited United States v. Demanett, 629 F.2d 862, 865 (3rd Cir. 1980), and United States v. Zurosky, 614 F.2d 779, 790 (1st Cir.) cert. denied, 46 U.S. 967 (1980) for authority to sustain its holding, neither of which case is on point, or remotely connected with the issue.

Petitioners filed a timely Petition for Rehearing pursuant to Rule 40, Federal Rules of Appellate Procedure and Suggestion for Rehearing en banc pursuant to Rule 35 of those Rules. The Petitioners urged the Court to reconsider its decision on the grounds that it was contrary to Sharp v. United States, 660 F.2d 967 (4th Cir. 1981), vacated and remanded, 457 U.S. 1127 (1982), modified, 412 F.2d 65 (4th Cir. 1983), cert. granted, 53 U.S.L.W. 3040 (1984). There are no cases in the United States which hold that a two (2) hour detention under the circumstances as stated above is permissable under either 1581(a) or the investigatory stop doctrine. In addition, the Court overlooked the fact that a two (2) hour seizure of the persons of the Petitioners of the vessel, "Lady Lisa", amounted to an arrest without probable cause, in violation of the fourth Amendment of the United States Constitution. The Petition was denied without elaboration on November 16, 1984.

The decision of the Fourth Circuit in this case is the first decision of its kind which involved the unnecessary delay of a vessel and its occupants for two (2) hours and requiring the vessel and its occupants to travel some nine (9) miles to make an investigatory stop under 19 U.S.C. 1581(a), or under the investigatory stop doctrine or the reasonable suspicion standard. The Appeals Court refused to decide the question of a minimum basis upon which an investigatory stop under Section 1581(a) may be upheld, but upheld the detention under the reasonable suspicion standard.

REASON FOR GRANTING PETITION

The decision of the Fourth Circuit is directly contrary to decisions of the United States Supreme Court.[1] In all of the cases cited [(1)] the Court envisioned "only a brief detention" and limited intrusion. The Fourth Circuit in this case gives unbridled and unlimited authority to detain a vessel for an unlimited period

of time which is in conflict with the decisions of the United States Supreme Court and other Courts of Appeal.[1]

Because the Fourth Circuit refused to decide the minimum applicable standard for an investigatory stop made on navigable waters, conducted under authority of Section 1581(a), and because the United States Supreme Court has held on several occasions, as have Appellate Courts of other Circuits, that the detention should be "brief" and the intrusion limited, an important question of federal law exists which should be settled by this Court. The Ninth Circuit, in United States of America v. Jose Guadalupe-Garza, 421 F.2d 876, at page 878 held that one must anticipate that he will be temporarily detained at the border. However, it is suggested that this detention must be brief.

Further, this decision vitiates the basic protection from unreasonable government searches and seizures guaranteed by the Fourth Amendment to the United

States Constitution, and grants U. S. Customs Agents powers not envisioned by either the laws of the United States or the Constitution of the United States.

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[1] Brown v. Texas, 443 U.S. 79 (1979); Terry v. Ohio, 392 U.S. 1, 16-19 (1968); United States v. Villamonte-Marquez, ____ U.S. ____ (Case No. 81-1350, decided 6/17/83) 51 U.S.L.W. 4812; Florida v. Royer 103 S.Ct. at 1328 (Case No. 80-2146, decided 3/23/82) 51 U.S.L.W. 4293; United States v. Ballard, 600 F.2d 1115 (5th Cir). The Fifth Circuit held that reasonable suspicion of illegal activity may authorize Customs Agent to detain a car briefly.

CONCLUSION

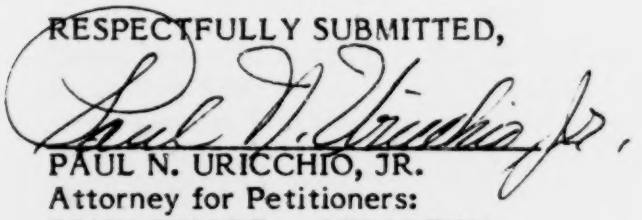
The petition for certiorari should be granted to resolve the conflict between the Fourth Circuit Court of Appeals and the United States Supreme Court and other Courts of Appeal, and the important federal question of whether or not the requiring of a vessel by U. S. Customs Agents to unnecessarily travel nine (9) miles and to undergo an unnecessary two (2) hour detention without probable cause is authorized by 19 U.S.C. 1581(a), under the investigatory stop doctrine and reasonable suspicion standard, and whether

or not such conduct violates the basic protection

from unreasonable searches and seizures guaranteed

by the Fourth Amendment to the United States Constitution.

RESPECTFULLY SUBMITTED,



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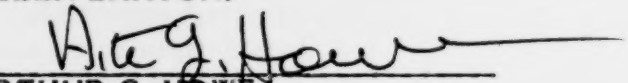

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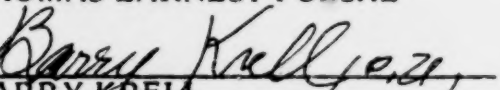

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At Charleston, South Carolina,

This 16th day of January, 1985.

CERTIFICATE OF SERVICE

I, T. A. BLAZER, do hereby certify that I have caused three copies of Petitioners' Petition for Certiorari to be deposited in the United States Mail, postage prepaid to:

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January 16, 1985

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